

## PUBLIC DEFENDER

Budget Summary						FTE Position Summary				
Fund	2012-13 Adjusted Base	Request		2013-15 Change Over Base Year Doubled		2012-13	Request		2014-15 Over 2012-13	
		2013-14	2014-15	Amount	%		2013-14	2014-15	Number	%
GPR	\$82,116,100	\$89,159,900	\$83,900,400	\$8,828,100	5.4%	574.85	585.85	585.85	11.00	1.9%
PR	1,289,500	1,350,500	1,354,500	126,000	4.9	5.00	6.00	6.00	1.00	20.0
TOTAL	\$83,405,600	\$90,510,400	\$85,254,900	\$8,954,100	5.4%	579.85	591.85	591.85	12.00	2.1%

### Major Request Items

#### 1. STANDARD BUDGET ADJUSTMENTS

GPR	- \$3,227,500
PR	23,500
Total	- \$3,204,000

Request standard adjustments totaling -\$1,639,400 GPR and \$11,700 PR in 2013-14, and -\$1,588,100 GPR and \$11,800 PR in 2014-15. Adjustments are for: (a) full funding of continuing salaries and fringe benefits (-\$2,070,200 GPR and \$4,100 PR annually); (b) reclassifications and semiautomatic pay progression (\$4,300 GPR and \$4,600 PR annually); (c) overtime (\$211,500 GPR and \$2,800 PR annually); and (d) full funding of lease costs and directed moves (\$215,000 GPR and \$200 PR in 2013-14, and \$266,300 GPR and \$300 PR in 2014-15).

#### 2. CHARGING AND SENTENCING ALTERNATIVES

GPR	- \$7,707,500
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Request -\$2,569,200 in 2013-14, and -\$5,138,300 in 2014-15, and adopt the following law changes, effective July 1, 2013, in order to reduce the number of SPD appointments:

a. Amend s. 961.41 of the statutes to provide that all first and second offense drug possession violations, other than for methamphetamine, involving 25 grams or less be reduced to an ordinance violation provided there is reasonable doubt that the individual was not manufacturing, distributing or delivering the drug. Further, amend the statutes to provide that all third offense drug possession violations, other than for methamphetamine, involving 25 grams or less be reduced to a misdemeanor violation provided there is reasonable doubt that the individual was not manufacturing, distributing or delivering the drug. This law change would affect an estimated 7,000 cases annually and reduce SPD costs by an estimated \$713,000 in 2013-14, and \$1,426,000 in 2014-15.

b. Provide that for the following misdemeanor violations, if the alleged offender had never been convicted of a felony offense and had not been convicted of a similar offense in the

previous three years, the prosecutor would be required to permit the alleged offender to either complete a diversion program by satisfying all conditions of the program including restitution when required, or pay a forfeiture under a stipulated finding of guilt under a non-criminal municipal ordinance: (1) criminal damage to property; (2) entry into a locked vehicle; (3) criminal trespass to a dwelling; (4) entry onto a construction site or into a locked building, dwelling or room; (5) theft; (6) fraud on innkeeper or taxicab operator; (7) operating a motor vehicle without consent; (8) issue of worthless checks; (9) receiving stolen property; (10) credit card crimes; (11) retail theft; (12) lewd and lascivious behavior; and (13) prostitution. The following table identifies the estimated reduced costs for the SPD for this law change by criminal violation. It is estimated that these changes would affect 12,000 cases annually.

<u>Legal Prohibition</u>	<u>2013-14</u>	<u>2014-15</u>
Theft	\$238,950	\$477,900
Retail theft	180,100	360,200
Criminal damage to property	137,850	275,700
Issue of worthless checks	43,350	86,700
Criminal trespass to a dwelling	29,050	58,100
Receiving stolen property	22,850	45,700
Operating a motor vehicle without consent	12,250	24,500
Credit card crimes	11,250	22,500
Prostitution	7,300	14,600
Lewd and lascivious behavior	5,100	10,200
Entry into a locked vehicle	4,300	8,600
Entry onto a construction site or into a locked building, dwelling or room	3,850	7,700
Fraud on innkeeper or taxicab operator	<u>3,000</u>	<u>6,000</u>
Total	\$699,200	\$1,398,400

c. Provide that for all first offense disorderly conduct violations, a prosecutor would be required to offer the alleged offender the opportunity to participate in a diversion program. This law change would affect an estimated 12,000 cases annually and reduce SPD costs by an estimated \$695,500 in 2013-14, and \$1,391,000 in 2014-15.

d. Provide that the following misdemeanor violations be reclassified as ordinance violations: (1) various violations under Chapter 29 (wild animals and plants); (2) carrying a concealed weapon; and (3) obstructing an officer, provided the obstruction was for giving false information and the false information was corrected before the end of the police contact or release. It is estimated that this law change would affect an estimated 4,300 cases annually and reduce SPD costs as follows for the following reclassifications to ordinance violations: (1) obstructing an officer, \$224,800 in 2013-14, and \$449,600 in 2014-15; (2) carrying a concealed weapon, \$47,100 in 2013-14, and \$94,200 in 2014-15; and (3) various violations under Chapter 29 (wild animals and plants), \$3,800 in 2013-14, and \$7,600 in 2014-15.

e. Reclassify felony forgery and credit card crimes to misdemeanors if the amount involved was less than \$2,500. It is estimated that this law change would affect an estimated 1,000 cases annually and reduce SPD costs as follows for the following reclassifications to

misdeemeanor violations: (a) forgery, \$134,300 in 2013-14, and \$268,600 in 2014-15; and (b) credit card crimes, \$2,700 in 2013-14, and \$5,300 in 2014-15.

f. Decriminalize consensual sexual contact with a minor when the age difference between the parties is less than three years and the only basis for the charge is that the minor is too young to legally consent. It is estimated that this law change would affect an estimated 600 cases annually and reduce SPD costs by \$48,800 in 2013-14, and by \$97,600 in 2014-15.

### **3. INFORMATION TECHNOLOGY HARDWARE, SOFTWARE, AND NETWORK UPGRADES**

	<b>Funding</b>	<b>Positions</b>
GPR	\$3,985,300	2.00

Request \$1,968,500 in 2013-14, \$2,016,800 in 2014-15, and 2.0 positions annually to upgrade hardware, software, and network bandwidth at all SPD offices statewide. Effective October 1, 2013, the two positions would include a 1.0 full-time equivalent (FTE) information services data services specialist and a 1.0 FTE information services network services specialist. The positions would assist with network support and installation as well as data management.

The funding would be provided as follows: (a) \$1,382,000 annually for supplies and services costs; (b) \$421,900 in 2013-14, and \$428,200 in 2014-15, for permanent property; (c) \$109,200 in 2013-14, and \$145,600 in 2014-15, for permanent salary costs; (d) \$45,800 in 2013-14, and \$61,000 in 2014-15, for fringe benefit costs; and (e) \$9,600 in 2013-14, for one-time supply and equipment needs for the positions.

The permanent property would include items costing more than \$5,000 each, including various servers and infrastructure software. Under the request, the supplies and services and permanent property funding would be utilized as follows: (a) hardware and software replacement, \$913,400 in 2013-14, and \$919,700 in 2014-15; (b) network upgrade, \$786,400 annually; (c) remote access, \$92,900 annually; and (d) ongoing supplies and services funding for the new positions, \$11,200 annually.

### **4. PRIVATE BAR FUNDING SHORTFALL**

GPR	\$2,082,700
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Request \$4,116,400 in 2013-14, and -\$2,033,700 in 2014-15, as a re-estimate of required funding to pay private bar attorney costs. The SPD estimates that the private bar funding shortfall will total \$6.2 million by the end of 2012-13. After re-estimating caseload for 2013-15, the SPD estimates that the requested funding will permit the Office to eliminate the shortfall.

The SPD has trial and appellate attorneys to represent clients who qualify for SPD representation. Staff attorneys, however, do not represent all clients who qualify for SPD representation. Overflow cases are assigned to private bar attorneys at the rate of \$40 per hour for in-court and out-of-court representation, and \$25 per hour for travel. Cases in which the SPD staff attorneys cannot represent a client due to a conflict of interest are also assigned to the private bar.

## **5. PRIVATE BAR ATTORNEY COMPENSATION**

GPR	\$3,506,000
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Request \$3,506,000 in 2014-15, to increase the hourly compensation paid to private bar attorneys representing SPD clients from \$40 per hour for in-court and out-of-court work to \$50 per hour. Further, request that this change apply to cases assigned on or after July 1, 2014. As there is, on average, a six-month delay from the time an SPD case is opened to when it is closed, the full annualized cost of this compensation change of \$7,012,000 would not be realized until the 2015-16 fiscal year.

## **6. PAY PROGRESSION**

GPR	\$3,432,100
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Request \$1,133,000 in 2013-14 (\$978,900 in permanent position salary funding and \$154,100 in fringe benefits funding), and \$2,299,100 in 2014-15 (\$1,986,300 in permanent position salary funding and \$312,800 in fringe benefits funding), to provide pay progression compensation increases for assistant state public defenders. The request would seek to provide pay progression compensation increases to assistant state public defenders comparable to what was provided to assistant district attorneys under 2011 Act 238.

Under 2011 Act 238, an annual pay progression plan for assistant district attorneys was created to provide increased compensation for prosecutors. The pay progression plan consists of 17 hourly salary steps, with each step equal to one-seventeenth of the difference between the lowest salary (\$49,429) and the highest salary (\$119,471) for assistant district attorneys contained in the state compensation plan. Under the 2011-13 state compensation plan, a salary step currently equals \$4,120. Beginning July 1, 2014, a supervising DA may increase the hourly salary of an assistant district attorney by an hourly salary step, or part thereof, above the prosecutor's hourly salary on the immediately preceding June 30. Notwithstanding the creation of a 17 hourly salary step pay progression plan, supervising DAs are authorized to: (a) deny annual salary increases to individual assistant district attorneys; and (b) increase the salary of individual assistant district attorneys by up to 10% per year. Currently, at the minimum annual salary of \$49,429, a 10% annual wage increase (\$4,942.90) exceeds the value of the current hourly step (\$4,120). Assistant district attorneys are the only class of attorneys in state government to have a statutorily established pay progression system to provide increased compensation.

## **7. CASE MANAGEMENT SYSTEM REPLACEMENT**

GPR	\$2,320,000
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Request \$1,910,000 in 2013-14, and \$410,000 in 2014-15, to replace the Office's electronic case management system, eOPD. Office staff indicates that its case management system, originally implemented in 2002, "needs significant overhaul to fix coding issues related to conflict of interest checks, management reports, and case entry and management." The request would provide funding for an "off-the-shelf" software solution estimated to cost \$1.5 million, as well as for \$410,000 in ongoing annual costs.

Alternatively, the Office indicates that \$397,800 in annual resources would permit it to upgrade and make enhancements to the current eOPD. However, "the agency requests that the option of a full system replacement would be the best option for ongoing success due to the

difficulty in recruiting for IT professionals with the required skills to maintain the system and data."

## 8. GPR EXPENDITURE REDUCTIONS

GPR	- \$1,640,800
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Request the deletion of \$820,400 annually in supplies and services funding. Supplies and services funding would be reduced in the following programs: (a) \$600,000 annually from trial representation; (b) \$100,000 annually from appellate representation; (c) \$80,000 annually from the administration of private bar appointments; and (d) \$40,400 annually from central administration of the Office of the State Public Defender. This would permanently implement the lapse requirements of 2011 Act 32.

## 9. COURT TRANSCRIPTS, DISCOVERY, AND INTERPRETER FUNDING

GPR	\$1,545,400
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Request \$772,700 annually in additional supplies and services funding to address higher costs associated with: (a) transcripts of court proceedings that SPD and private bar attorneys request from the courts; (b) copying charges incurred by counties and other parties to provide SPD and private bar attorneys with discovery materials; and (c) court interpreters. Current base funding for transcripts, discovery, and interpreter costs totals \$1,325,700 annually.

## 10. RESTORATION OF 2009 WISCONSIN ACT 28 ACROSS-THE-BOARD 1% REDUCTIONS

GPR	\$1,118,800
PR	7,800
Total	\$1,126,600

Request \$559,400 GPR and \$3,900 PR annually to restore supplies and services funding associated with an across-the-board 1% reduction in most non-federal appropriations made under 2009 Act 28 (the 2009-11 biennial budget). The requested restoration of funding by appropriation is shown below:

<u>Fund</u>	<u>Appropriation</u>	<u>Annual Restoration</u>
GPR	Trial Representation	\$475,200
GPR	Appellate Representation	51,200
GPR	Program Administration	26,000
GPR	Private Bar Payments; Administration	7,000
PR	Private Bar Payments; Administration	2,500
PR	Conferences and Training	1,400

## 11. EXPERT WITNESS RESOURCES FOR SEXUALLY VIOLENT PERSON COMMITMENT CASES AND SEXUAL ASSAULT CASES

GPR	\$1,035,200
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Request \$517,600 annually in additional supplies and services funding to provide the Office additional resources to retain expert witnesses in cases for which Office staff provide

representation. Specifically, request: (a) \$337,600 annually to retain expert witnesses for sexually violent person commitment cases under Chapter 980; and (b) \$180,000 annually to retain expert witnesses in sexual assault cases. Expert witness funding for sexually violent person commitment cases and sexual assault cases assigned to private bar attorneys has been provided as a part of the biennial re-estimate of the aggregate need for private bar funding.

Under current law, a petition alleging that an individual is a sexually violent person may be filed by either: (a) the Department of Justice (DOJ) at the request of the "agency with jurisdiction" (either the Department of Corrections or the Department of Health Services); or (b) a district attorney. If an individual is found guilty of a sexually violent offense, he or she is sentenced to prison, while if an individual is found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness, he or she is committed to an institution under the Department of Health Services (DHS). Subsequent to an individual serving a prison sentence or being released from the care of DHS for having committed a sexually violent offense, the individual may be committed to DHS as a sexually violent person based on the petition filed by DOJ or a district attorney. If, after a trial, an individual is determined to be a sexually violent person, the court must enter a judgment on the finding and commit the person as a sexually violent person. In that event, the court must order the person committed to the custody of DHS for control, care, and treatment until the person is no longer a sexually violent person. An individual committed as a sexually violent person is entitled to an annual review of the commitment and has a right to counsel at such reviews. The SPD indicates that it is experiencing a rising caseload, both for initial commitment as well as the annual reviews for commitment as a sexually violent person.

## **12. CONVERTING AND MAINTAINING COURT TRANSCRIPTS AND DISCOVERY DOCUMENTS AS ELECTRONIC RECORDS**

GPR	\$535,000
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Request \$355,000 in 2013-14 (\$175,000 for permanent property, \$150,000 for supplies and services, and \$30,000 for LTE and miscellaneous salaries), and \$180,000 in 2014-15 (\$150,000 for supplies and services, and \$30,000 for LTE and miscellaneous salaries), to permit the Office to convert and maintain court transcripts and other discovery documents as electronic records. Costs would include: (a) \$175,000 in equipment costs for two large storage servers and one optical character recognition scanner (permanent property); (b) \$150,000 annually in software licensing fees associated with the scanner (supplies and services); and (c) \$30,000 annually to retain a contractor to manage the electronic records and network needs (LTE and miscellaneous salaries).

## **13. REGIONAL OFFICE ADMINISTRATIVE RESOURCES**

	<b>Funding</b>	<b>Positions</b>
GPR	\$496,300	3.00

Request 3.0 regional office management program supervisors and associated funding of \$226,100 in 2013-14 (\$127,300 in permanent position salaries, \$51,000 in fringe benefits funding, \$32,500 in supplies and services funding, and \$15,300 in one-time position costs), and \$270,200 in 2014-15 (\$169,700 in permanent position salaries, \$68,000 in fringe benefits

funding, and \$32,500 in supplies and services funding). The responsibilities of these positions would include: (a) supervision and training of non-attorney staff; (b) working with the courts regarding the appointment of counsel; (c) financial eligibility for SPD representation determinations; (d) working with central administration and other agency management; (e) providing input regarding data management development; (f) file and records management at the regional level; and (g) special projects. There are currently 6.0 FTE regional office management program supervisors in the 12 SPD regions across the state. This request would provide an additional three positions.

#### 14. ADDITIONAL AGENCY-WIDE ADMINISTRATIVE RESOURCES

	Funding	Positions
GPR	\$337,100	3.00
PR	<u>89,400</u>	<u>1.00</u>
Total	\$426,500	4.00

Request \$158,900 GPR, \$43,100 PR and 4.0 positions in 2013-14, and \$178,200 GPR, \$46,300 PR and 4.0 positions in 2014-15, to provide additional agency-wide administrative personnel to the SPD. The positions would include: (a) 1.0 accountant; (b) 1.0 financial specialist; (c) 1.0 human resources specialist-advanced; and (d) 1.0 office operations associate. The Office indicates that it currently has 7.80 positions to provide administrative services for the agency.

#### 15. SENTENCE MODIFICATIONS

GPR	\$356,500
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Request \$119,900 in 2013-14, and \$236,600 in 2014-15, and amend state statute to permit the SPD broader discretion to participate in prisoner sentence modification motions. Under current law, the SPD is generally prohibited from providing legal services or assigning an attorney for a motion to modify a prisoner's sentence unless the motion is: (a) part of a direct appeal; or (b) filed in lieu of a direct appeal within 20 days of sentencing.

#### 16. SENTENCING SPECIALISTS

	Funding	Positions
GPR	\$292,200	3.00

Request \$136,300 in 2013-14, \$155,900 in 2014-15, and 3.0 client services specialist positions annually to provide increased resources to prepare alternative-to-revocation and sentencing plans with the goal of diverting individuals from incarceration by proposing alternatives to be considered by the prosecution and the courts. The SPD indicates that if the positions were approved, the Office would seek to document savings and recidivism among individuals who received these expanded services. The SPD also indicates that, "Some of the positions requested could be assigned in counties that contribute significantly to the present [racial] disparity, with the goal of diverting more minority clients from incarceration to appropriate alternatives."

#### 17. PUBLIC DEFENDER INDIGENCY STANDARD

Request that the SPD indigency standard be linked to the Wisconsin Works (W-2) financial eligibility requirements for an employment position as it was under 2009 Act 164. As a

result, the amount of gross income of an individual considered available to pay the costs of legal representation could change annually based on the amount of an individual's gross income in excess of 115% of the most recent federal poverty guideline. [Under 2011 Act 32, available gross income was permanently set at amounts in excess of 115% of the 2011 federal poverty guideline.] Likewise, in determining available assets, assets considered available to pay the costs of legal representation could change based on any statutory revisions to the W-2 asset standard for an employment position, with the SPD modification that for purposes of determining eligibility to receive SPD representation only the first \$30,000 in the equity value of a home that served as the individual's homestead would be considered. [Under 2011 Act 32, the SPD indigency standard was permanently set at the 2011 W-2 asset standard for an employment position.]